

IC 13-14-9

Chapter 9. Rulemaking Procedures

IC 13-14-9-1

Applicability of chapter

Sec. 1. (a) This chapter applies to the following:

(1) A board.

(2) The underground storage tank financial assurance board established by IC 13-23-11-1.

(b) In addition to the requirements of IC 4-22-2 and IC 13-14-8, a board may not adopt a rule except in accordance with this chapter.

As added by P.L.1-1996, SEC.4.

IC 13-14-9-2

Public comment periods

Sec. 2. Except as provided in sections 4.5, 7, and 8 of this chapter, a board may not adopt a rule under this chapter until the board has conducted at least two (2) public comment periods, each of which must be at least thirty (30) days in length.

As added by P.L.1-1996, SEC.4. Amended by P.L.130-1997, SEC.1.

IC 13-14-9-3

First public comment period; notice

Sec. 3. The department shall provide notice in the Indiana Register of the first public comment period required by section 2 of this chapter. A notice provided under this section must do the following:

(1) Identify the authority under which the proposed rule is to be adopted.

(2) Describe the subject matter and the basic purpose of the proposed rule. The description required by this subdivision must include a listing of all alternatives being considered by the department at the time of the notice and must set forth the basis for each alternative.

(3) Describe the relevant statutory or regulatory requirements or restrictions relating to the subject matter of the proposed rule that exist before the adoption of the proposed rule.

(4) Request the submission of alternative ways to achieve the purpose of the proposed rule.

(5) Request the submission of comments, including suggestions of specific language for the proposed rule.

(6) Include a detailed statement of the issue to be addressed by adoption of the proposed rule.

As added by P.L.1-1996, SEC.4. Amended by P.L.130-1997, SEC.2.

IC 13-14-9-4

Second public comment period; notice

Sec. 4. The department shall provide notice in the Indiana Register of the second public comment period required by section 2 of this chapter. A notice provided under this section must do the following:

(1) Contain the full text of the proposed rule, as provided under

IC 4-22-2-24(c).

(2) Contain a summary of the response of the department to written comments submitted under section 3 of this chapter during the first public comment period.

(3) Request the submission of comments, including suggestions of specific amendments to the language contained in the proposed rule.

(4) Contain the full text of the commissioner's written findings under section 7 of this chapter, if applicable.

As added by P.L.1-1996, SEC.4.

IC 13-14-9-4.5

Third public comment period; notice

Sec. 4.5. (a) Except for a rule:

(1) that has been preliminarily adopted by a board in a form that is:

(A) identical to; or

(B) not substantively different from;

the proposed rule published in a second notice under section 4 of this chapter; or

(2) for which the commissioner has made a determination and prepared written findings under section 7 or 8 of this chapter;

a board may not adopt a rule under this chapter until the board has conducted a third public comment period that is at least twenty-one (21) days in length.

(b) The department shall publish notice of a third public comment period with the text and summary that are required to be published in the Indiana Register under section 5(a)(2) of this chapter.

(c) The notice of a third public comment period that must be published in the Indiana Register under subsection (b) must request the submission of comments, including suggestions of specific amendments, that concern only the portion of the preliminarily adopted rule that is substantively different from the language contained in the proposed rule published in a second notice under section 4 of this chapter.

As added by P.L.130-1997, SEC.3.

IC 13-14-9-5

Adoption; prerequisites

Sec. 5. (a) A board may not adopt a rule until all of the following occur:

(1) The board holds a board meeting on the proposed rule.

(2) The department, after approval of the proposed rule by the board under subsection (c), publishes the following in the Indiana Register as provided in IC 4-22-2-24(c):

(A) The full text of the proposed rule, including any amendments arising from the comments received before or during the meeting held under subdivision (1).

(B) A summary of the response of the department to all comments received at the meeting held under subdivision (1).

(C) For a proposed rule with an estimated economic impact on

regulated entities that is greater than five hundred thousand dollars (\$500,000), a copy of the legislative services agency fiscal analysis required under IC 4-22-2-28.

(3) The board, after publication of the notice under subdivision (2), holds another board meeting on the proposed rule.

(4) If a third public comment period is required under section 4.5 of this chapter, the department publishes notice of the third public comment period in the Indiana Register.

(b) Board meetings held under subsection (a)(1) and (a)(3) shall be conducted in accordance with IC 4-22-2-26(b) through IC 4-22-2-26(d).

(c) At a board meeting held under subsection (a)(1), the board shall determine whether the proposed rule will:

(1) proceed to publication under subsection (a)(2);

(2) be subject to additional comments under section 3 or 4 of this chapter, considering any written finding made by the commissioner under section 7 or 8 of this chapter; or

(3) be reconsidered at a subsequent board meeting in accordance with IC 4-22-2-26(d).

As added by P.L.1-1996, SEC.4. Amended by P.L.130-1997, SEC.4; P.L.2-1998, SEC.48; P.L.224-1999, SEC.2.

IC 13-14-9-6

Board meetings; written materials

Sec. 6. In addition to the requirements of section 8 of this chapter, the department shall include the following in the written materials to be considered at the board meetings held under section 5(a)(1) and 5(a)(3) of this chapter:

(1) The full text of the proposed rule, as most recently prepared by the department.

(2) The written responses of the department to all comments received:

(A) during the immediately preceding comment period for a board meeting held under section 5(a)(1) of this chapter;

(B) during the immediately preceding board meeting under section 5(a)(1) of this chapter for a board meeting held under section 5(a)(3) of this chapter if a third public comment period is not required under section 4.5 of this chapter; or

(C) during:

(i) a third public comment period that address the portion of the preliminarily adopted rule that is substantively different from the language contained in the proposed rule published in a second notice under section 4 of this chapter; and

(ii) the immediately preceding board meeting held under section 5(a)(1) of this chapter;

for a board meeting held under section 5(a)(3) of this chapter if a third public comment period is required under section 4.5 of this chapter.

(3) The full text of the legislative services agency fiscal analysis if a fiscal analysis is required under IC 4-22-2-28.

As added by P.L.1-1996, SEC.4. Amended by P.L.130-1997, SEC.5;

P.L.224-1999, SEC.3.

IC 13-14-9-7

Waiver of first public comment period

Sec. 7. (a) Unless a board determines under section 5(c)(2) of this chapter that a proposed rule should be subject to additional comments, section 3 of this chapter does not apply to a rulemaking action if the commissioner determines that the rulemaking policy alternatives available to the department are so limited that the public notice and comment period under section 3 of this chapter would provide no substantial benefit to:

- (1) the environment; or
- (2) persons to be regulated or otherwise affected by the proposed rule.

(b) If the commissioner makes a determination under subsection (a), the commissioner shall prepare written findings under this section. The full text of the commissioner's written findings shall be included in the public notice provided under section 4 of this chapter.

As added by P.L.1-1996, SEC.4.

IC 13-14-9-8

Waiver of both first and second public comment periods

Sec. 8. (a) Unless a board determines under section 5(c)(2) of this chapter that a proposed rule should be subject to additional comments, sections 3 and 4 of this chapter do not apply to a rulemaking action if the commissioner determines that:

- (1) the proposed rule constitutes:
 - (A) an adoption or incorporation by reference of a federal law, regulation, or rule that:
 - (i) is or will be applicable to Indiana; and
 - (ii) contains no amendments that have a substantive effect on the scope or intended application of the federal law or rule;
 - (B) a technical amendment with no substantive effect on an existing Indiana rule; or
 - (C) a substantive amendment to an existing Indiana rule, the primary and intended purpose of which is to clarify the existing rule; and
- (2) the proposed rule is of such nature and scope that there is no reasonably anticipated benefit to the environment or the persons referred to in section 7(a)(2) of this chapter from the following:
 - (A) Exposing the proposed rule to diverse public comment under section 3 or 4 of this chapter.
 - (B) Affording interested or affected parties the opportunity to be heard under section 3 or 4 of this chapter.
 - (C) Affording interested or affected parties the opportunity to develop evidence in the record collected under sections 3 and 4 of this chapter.

(b) If the commissioner makes a determination under subsection (a), the commissioner shall prepare written findings under this section. The full text of the commissioner's written findings shall be:

(1) published in the Indiana Register before the public meeting held under section 5(a)(1) of this chapter; and
(2) included in the written materials to be considered by the board at the public meeting held under section 5(a)(1) of this chapter.
As added by P.L.1-1996, SEC.4.

IC 13-14-9-9

Action upon proposed rules

Sec. 9. After complying with sections 2 through 8 of this chapter, the board may, at the board meeting held under section 5(a)(3) of this chapter:

- (1) adopt a rule that is identical to the proposed rule published under section 5(a)(2) of this chapter;
- (2) adopt the proposed rule with amendments that meet the criteria set forth in section 10 of this chapter;
- (3) recommend amendments to the proposed rule that do not meet the criteria set forth in section 10 of this chapter;
- (4) reject the proposed rule; or
- (5) reconsider the proposed rule at a subsequent board meeting in accordance with IC 4-22-2-26(d).

As added by P.L.1-1996, SEC.4.

IC 13-14-9-10

Amended proposals; logical outgrowth

Sec. 10. (a) A board may amend a proposed rule at a board meeting held under section 5(a)(3) of this chapter and adopt the amended rule under section 9(2) of this chapter if the amendments are a logical outgrowth of:

- (1) the proposed rule as published under section 5(a)(2) of this chapter; and
- (2) any comments provided to the board at the meeting held under section 5(a)(3) of this chapter.

(b) In determining, for the purposes of this section, whether an amendment is a logical outgrowth of the proposed rule and any comments, the board shall consider:

- (1) whether the language of:
 - (A) the proposed rule as published under section 5(a)(2) of this chapter; and
 - (B) any comments provided to the board at the meeting held under section 5(a)(3) of this chapter;fairly apprised interested persons of the specific subjects and issues contained in the amendment; and
- (2) whether the interested parties were allowed an adequate opportunity to be heard by the board.

As added by P.L.1-1996, SEC.4.

IC 13-14-9-11

Amended proposals; notice

Sec. 11. If the board recommends amendments to a proposed rule under section 9(3) of this chapter, the full text of the proposed rule and accompanying amendments shall be published in accordance with

section 5(a)(2) of this chapter. After that publication, the board shall hold another board meeting on the proposed rule under section 5(a)(3) of this chapter.

As added by P.L.1-1996, SEC.4.

IC 13-14-9-12

Rejection; grounds

Sec. 12. The board may reject a proposed rule under section 9(4) of this chapter if one (1) of the following conditions exists:

- (1) The following occurs or has occurred:
 - (A) under section 8 of this chapter, sections 3 and 4 of this chapter did not apply to the proposed rule; and
 - (B) either:
 - (i) the board determines that necessary amendments to the proposed rule will affect persons that reasonably require an opportunity to comment under section 4 of this chapter, considering the criteria set forth in section 8(2) of this chapter; or
 - (ii) the board determines that due to the fundamental or inherent structure or content of the proposed rule, the only reasonably anticipated method of developing a rule acceptable to the board is to require the department to redraft the rule and to obtain the public comments under section 4 of this chapter; or
- (2) the following occurs or has occurred:
 - (A) the proposed rule was subject to sections 3 and 4 of this chapter; and
 - (B) either:
 - (i) the board makes a determination set forth in subdivision (1)(B)(i) or (1)(B)(ii); or
 - (ii) the board determines that, due to a procedural or other defect in the implementation of the requirements under sections 3 and 4 of this chapter, an interested or affected party will be unfairly and substantially prejudiced if the public comment period under section 4 of this chapter is not again afforded and that no reasonable alternative method to obtain public comments is available to the interested or affected party other than the public comment period under section 4 of this chapter.

As added by P.L.1-1996, SEC.4.

IC 13-14-9-13

Rejection; public comment

Sec. 13. If a board rejects a proposed rule under section 12 of this chapter, the proposed rule is subject to section 4 of this chapter whether or not the proposed rule has previously been the subject of the comment period required by section 4 of this chapter.

As added by P.L.1-1996, SEC.4.